## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NORTH DAKOTA SOUTHWESTERN DIVISION

United States of America,	)	
Plaintiff,	) ) )	ORDER
vs.	)	
Donald Clark Luger, a/k/a Jody Luger,	) ) )	Case No. 1:13-cr-092
Defendant.	)	

Defendant apparently requested a transcript of his June 3, 2013, detention hearing. On June 12, 2013, the court reporter filed the transcript with the Clerk's office, where is presently available for inspection only. In accordance with Judicial Council policy, the transcript will be available for inspection and copying in the Clerks office and for download from the Clerk' office's CM/ECF system and through the judiciary's PACER system on September 10, 2013.

On June 18, 2013, defendant filed a motion to seal the transcript of his detention hearing.

On June 19, 2013, the government filed a response in opposition to the motion.

The right of public access to the courts is protected under the common law and the First Amendment to the United States Constitution. See Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982) (stating the public has a First Amendment right of access to criminal trials); <u>U.S. v. Leonardo</u>, 129 F.Supp. 2d 240, 243 (W.D.N.Y., 2001) (observing that circuit courts, including the Eighth Circuit, have extended the First Amendment right of access to many pretrial proceedings); <u>United States ex rel. Pulitzer Publishing Co.</u>, 635 F.2d 676, 678 (8th Cir.1980) (granting a petition for a writ of mandamus seeking to prevent the district court from closing voire

dire examination of prospective jurors). "While the right of public access is not absolute, there must

be a demonstration that "closure is essential to preserve higher values and is narrowly tailored to

serve that interest." Publicker v. Cohen, 733 F.2d 1059, 1069 (3d Cir.1984); see also Oregonian

Publ'g Co. v. District Court, 920 F.2d 1482, 1465 (9th Cir.1990) ("Under the first amendment, the

press and the public have a presumed right of access to court proceedings and documents.... This

presumed right can be overcome only by an overriding right or interest 'based on findings that

closure is essential to preserve higher values and is narrowly tailored to serve that interest."

(quoting Press–Enterprise v. Superior Court, 464 U.S. 501, 510 (1984)).

Defendant made no request to close the hearing and seal the record prior to or during the

hearing. It is only now, after the detention hearing was held in open court and the record

transcribed, that he asks the court to seal the transcript.

Defendant has not articulated any reasons in his motion why the transcript should be sealed.

The hearing itself was open to the general public. During the hearing, the parties did not personally

identify victims of any alleged misconduct. Finally, there is nothing now before the court suggesting

that a failure to seal the record will irreparably damage defendant's right to a fair trial.

Consequently, the court finds no compelling reason to order the transcript sealed at this time.

Defendant's motion (Docket No. 17) is **DENIED**.

IT IS SO ORDERED.

Dated this 21st day of June, 2013.

/s/ Charles S. Miller, Jr.

Charles S. Miller, Jr. Magisrate Judge

**United States District Court** 

2